



POLICY UPDATES & LEGAL TRENDS

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Section Chief - Policy, Monitoring and Audit
Exceptional Children Division*





OUTLINE

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- PMA Updates
- Changes to Federal Regulations

QA

- HB 149: Dyslexia
- LEA Self-Assessment
- Visual Impairment

Check for Understanding

- Legal Trends
 - *Endrew* - FAPE Standard

QA



OPPORTUNITIES TO PARTICIPATE

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- Questions
 - [mentimeter.com](https://www.mentimeter.com)
- Check for Understanding
 - Kahoot!
- FAQs
 - EC Division Website



SESSION TOPICS

- Maintenance of Effort
- ESSA
- LEA Self-Assessment
- Rosa's Law
- Dyslexia
- Visual Impairment
- *Endrew*
- PMA Updates

LET'S TRY! WHAT TOPIC ARE YOU MOST INTERESTED IN?

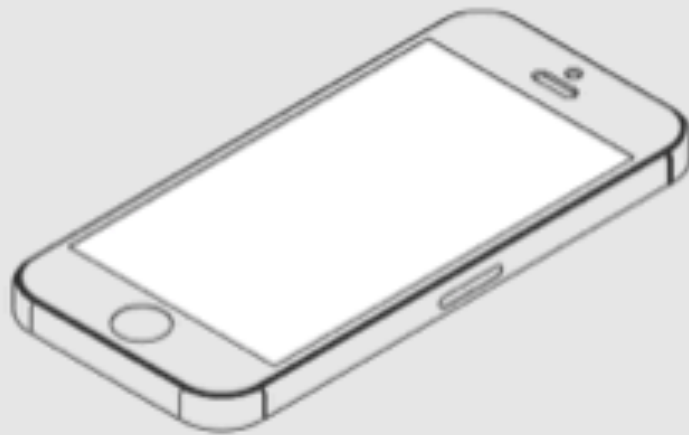
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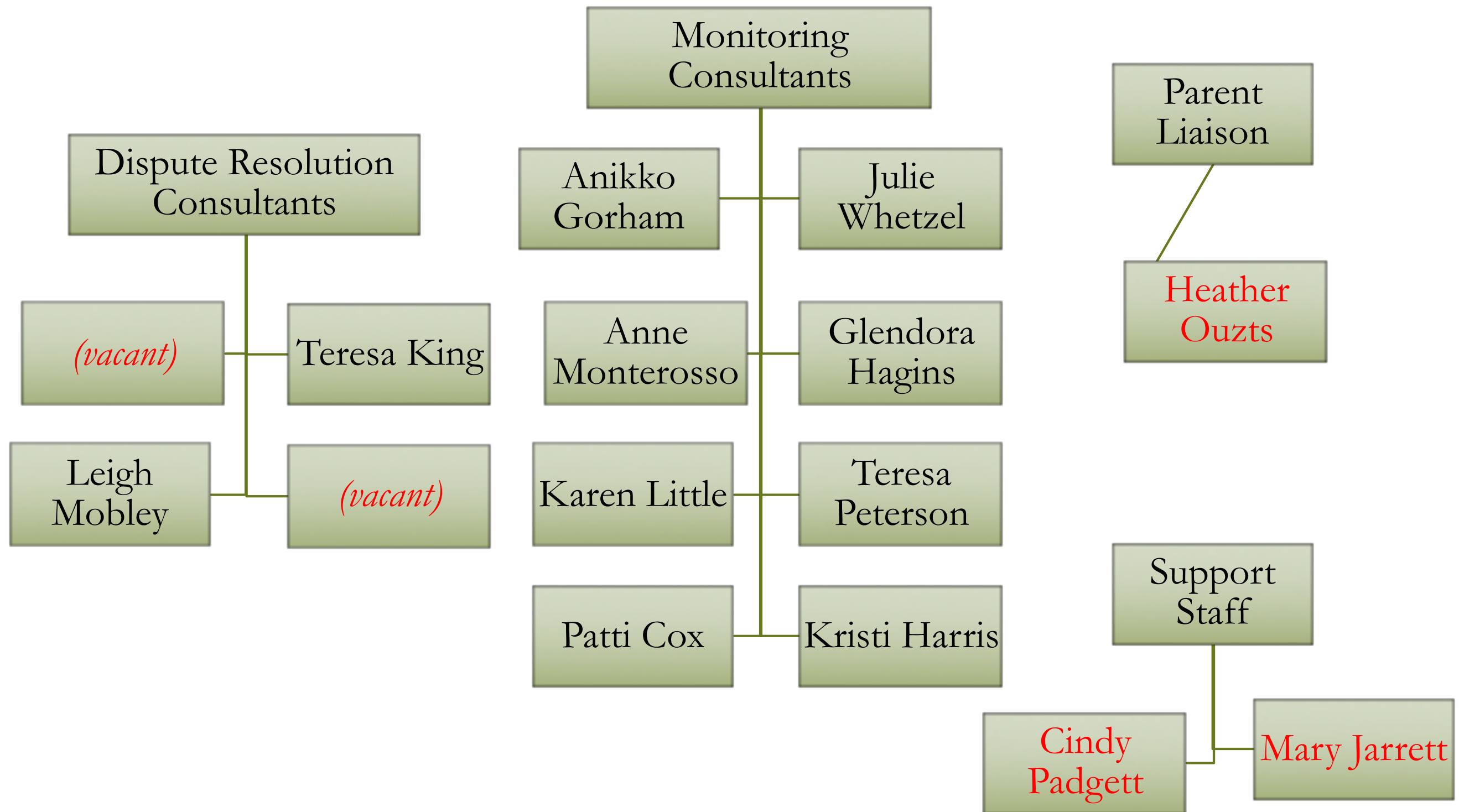
3 Enter the code
64 45 40 and vote!

Go to Results!

PMA UPDATES



Policy, Monitoring and Audit



Danyelle Sanders

INDICATOR 8

Parent Survey





IMPORTANT DATES

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- Surveys out to selected LEAs
 - March 23, 2018
- Survey closes
 - June 15, 2018
- LEA/SEA Reports Returned
 - On or before July 31, 2018

ECATS: INDICATOR 8

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- Goals for 2018-2019
 - Review/Revise current parent survey
 - Discuss whether or not to continue sampling plan with selected LEAs
 - Consider another process for gathering parent input
 - Utilize ECATS for the collection and analysis of parent survey data

CHANGES TO FEDERAL REGULATIONS



OVERVIEW

- IDEA
 - IDEA Website
- Federal Register
 - Comments and Analysis
 - Updates to the Federal Register
- North Carolina Policies Governing Services for Children with Disabilities (*Policies*)

IDEA

<https://sites.ed.gov/idea/?src=pr>





<https://sites.ed.gov/idea/>

FEDERAL REGISTER



Public Schools of North Carolina
State Board of Education
Department of Public Instruction



Federal Register

Monday,
August 14, 2006

Part II

Department of Education

34 CFR Parts 300 and 301
Assistance to States for the Education of
Children With Disabilities and Preschool
Grants for Children With Disabilities;
Final Rule

Parent (§ 300.30)

Comment: Several commenters objected to the term “natural parent” in the definition of *parent* because “natural parent” presumes there are “unnatural parents.” The commenters recommended using “birth parent” or “biological parent” throughout the regulations.

Discussion: We understand that many people find the term “natural parent” offensive. We will, therefore, use the term “biological parent” to refer to a non-adoptive parent.

Changes: We have replaced the term “natural parent” with “biological parent” in the definition of *parent* and throughout these regulations.

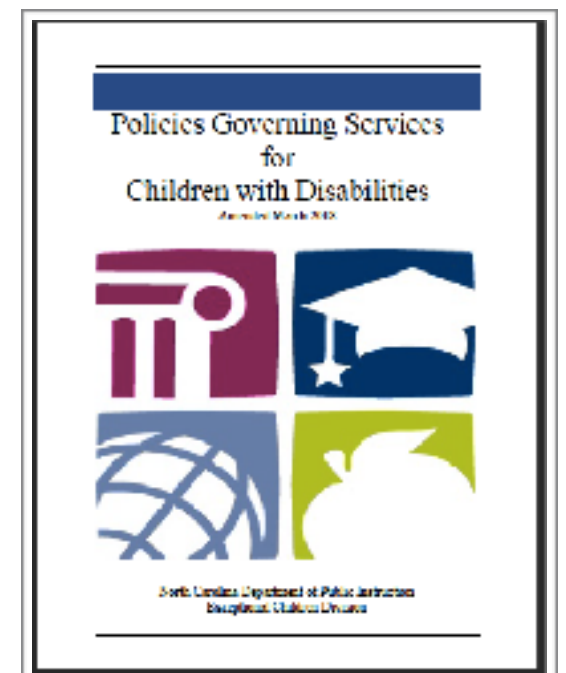
Comment: A significant number of commenters recommended retaining the language in current § 300.20(b), which states that a foster parent can act as a parent if the biological parent’s authority to make educational decisions on the child’s behalf have been extinguished under State law, and the foster parent has an ongoing, long-term parental relationship with the child; is willing to make the educational decisions required of parents under the Act; and has no interest that would conflict with the interest of the child.

ANALYSIS OF COMMENTS AND CHANGES

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- A discussion of the substantive issues under the subpart and section to which they pertain.

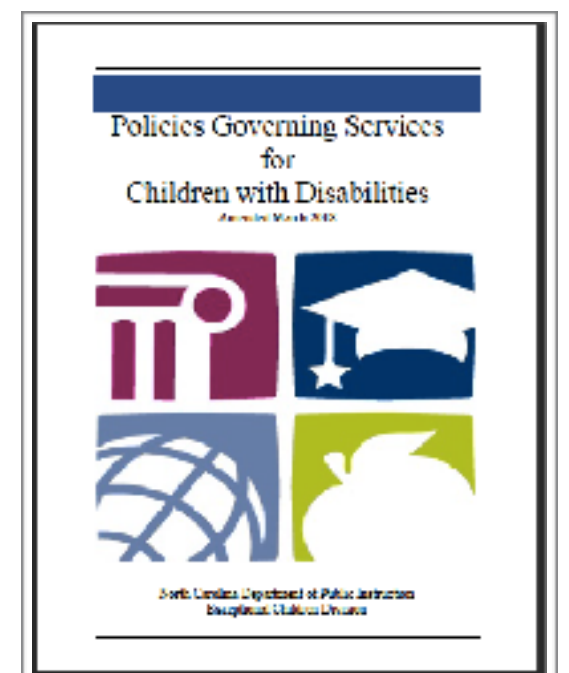
UPDATES TO THE FEDERAL REGISTER

- Federal Register **Update**: April 28, 2015
 - Maintenance of Effort
 - Eligibility Standards
 - Compliance Standard
 - Subsequent Years
 - Consequence of Failure to Maintain Effort



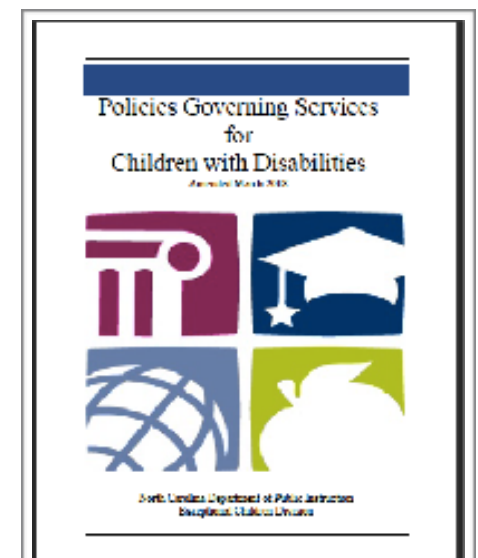
UPDATES TO THE FEDERAL REGISTER

- Federal Register [Update](#): December 16, 2016
 - Significant Disproportionality (SD)
 - Determine whether SD, based on race or ethnicity, is occurring in the State and in its LEAs
 - Clarify that States must address SD in the incidence, duration, and type of disciplinary actions, including suspensions and expulsions



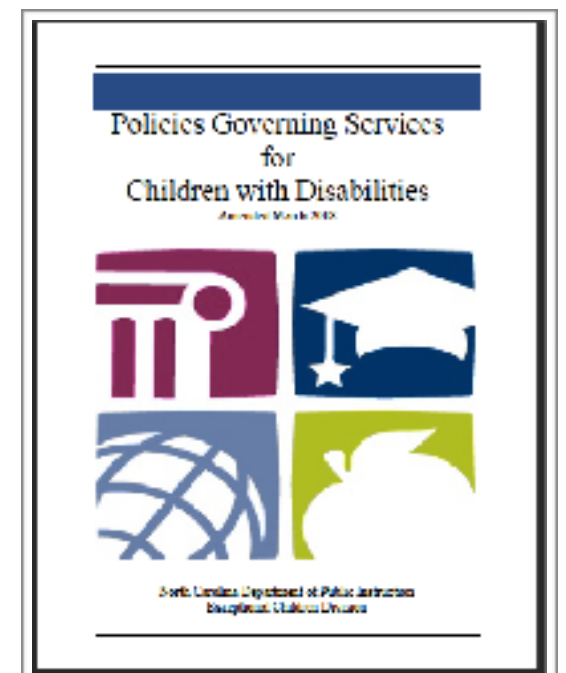
UPDATES TO THE FEDERAL REGISTER

- Federal Register [Update](#): December 16, 2016
 - Significant Disproportionality (SD)
 - Clarify requirements for the review and revision of policies, practices, and procedures when SD is found; and
 - Require that LEAs identify and address the factors contributing to SD as a part of comprehensive CEIS and allow these services for children age 3 through grade 12, with and without disabilities.



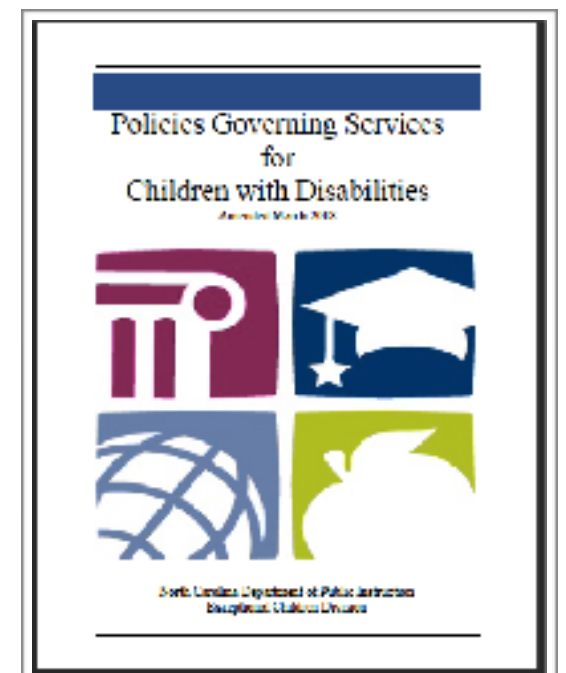
UPDATES TO THE FEDERAL REGISTER

- Federal Register **Update**: June 30, 2017
 - Every Student Succeeds Act (ESSA)
 - **REVISED** definitions
 - Charter School
 - Limited English Proficient - “English Learner”
 - Regular high school diploma



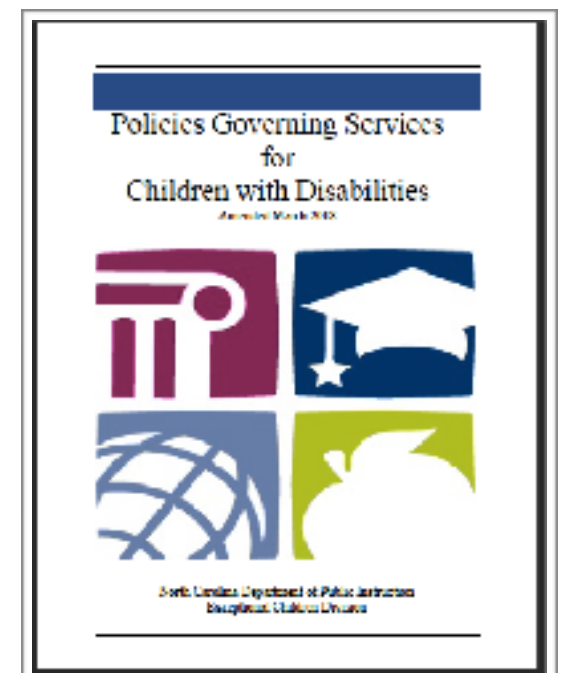
UPDATES TO THE FEDERAL REGISTER

- Federal Register **Update**: June 30, 2017
 - Every Student Succeeds Act (ESSA)
 - Definitions that were **REMOVED**
 - Core academic subjects
 - Highly qualified special education teacher
 - Scientifically based research



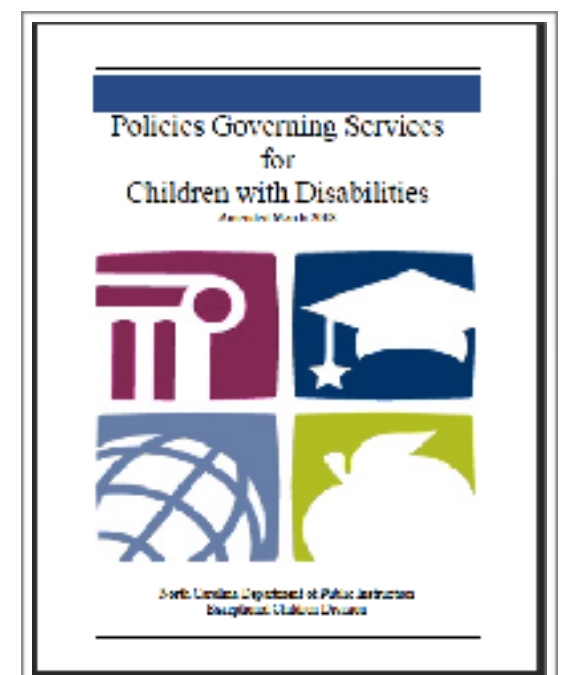
UPDATES TO THE FEDERAL REGISTER

- Federal Register [Update](#): June 30, 2017
 - Every Student Succeeds Act (ESSA)
 - Moved qualifications for special education teachers to “Personnel Qualifications”
 - Clarified guidelines for alternate assessments to measure academic progress for students with the most significant cognitive disabilities whose achievement is measured against alternate achievement standards



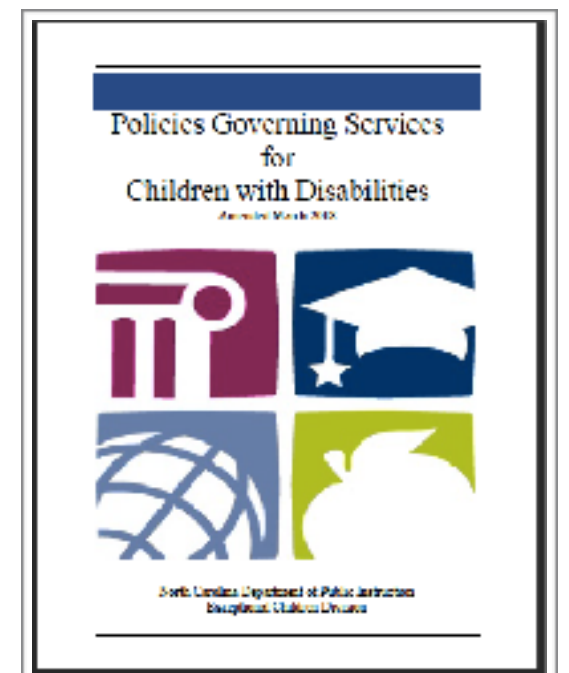
UPDATES TO THE FEDERAL REGISTER

- Federal Register [Update](#): June 30, 2017
 - Every Student Succeeds Act (ESSA)
 - State-level activities require technical assistance by implementing comprehensive/targeted support and improvement activities based on consistent underperformance of the disaggregated subgroup of children with disabilities



UPDATES TO THE FEDERAL REGISTER

- Federal Register [Update](#): July 11, 2017
 - Rosa's Law
 - Changes references to “mental retardation” in federal law to “intellectual disability” or “intellectual disabilities”.



NC POLICIES GOVERNING SERVICES FOR CHILDREN WITH DISABILITIES



MAINTENANCE OF EFFORT



MAINTENANCE OF EFFORT

- NC 1502-4 Maintenance of Effort
- NC 1502-5 Exception to Maintenance of Effort
- NC 1502-6 Adjustment of Local Fiscal Efforts...
 - Old Book: Pages 54-55
 - New Book: Pages 52-54

EVERY STUDENT SUCCEEDS ACT (ESSA)



ESSA: DEFINITIONS THAT WERE REVISED

- Charter School
 - only amended the authority citation to reference ESSA
- Limited English Proficient - “English Learner”
 - NC 1500-2.20
 - Old Book: page 13
 - New Book: page 14 [NC 1500-2.19]
 - “English learner has the meaning given to the term in section 8101 of the ESEA.”

ESSA: DEFINITIONS THAT WERE REVISED

- Regular high school diploma
 - NC 1501-1.2 Limitation - Exception for FAPE at Certain Ages
 - Old Book: page 22
 - New Book: page 22

ESSA: DEFINITIONS THAT WERE REVISED

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➤ Regular high school diploma

(1) Children aged 3, 4, 5, 18, 19, 20, or 21, in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children of those ages.

~~(ii) As used in paragraphs (a)(2)(i) through (a)(2)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).~~

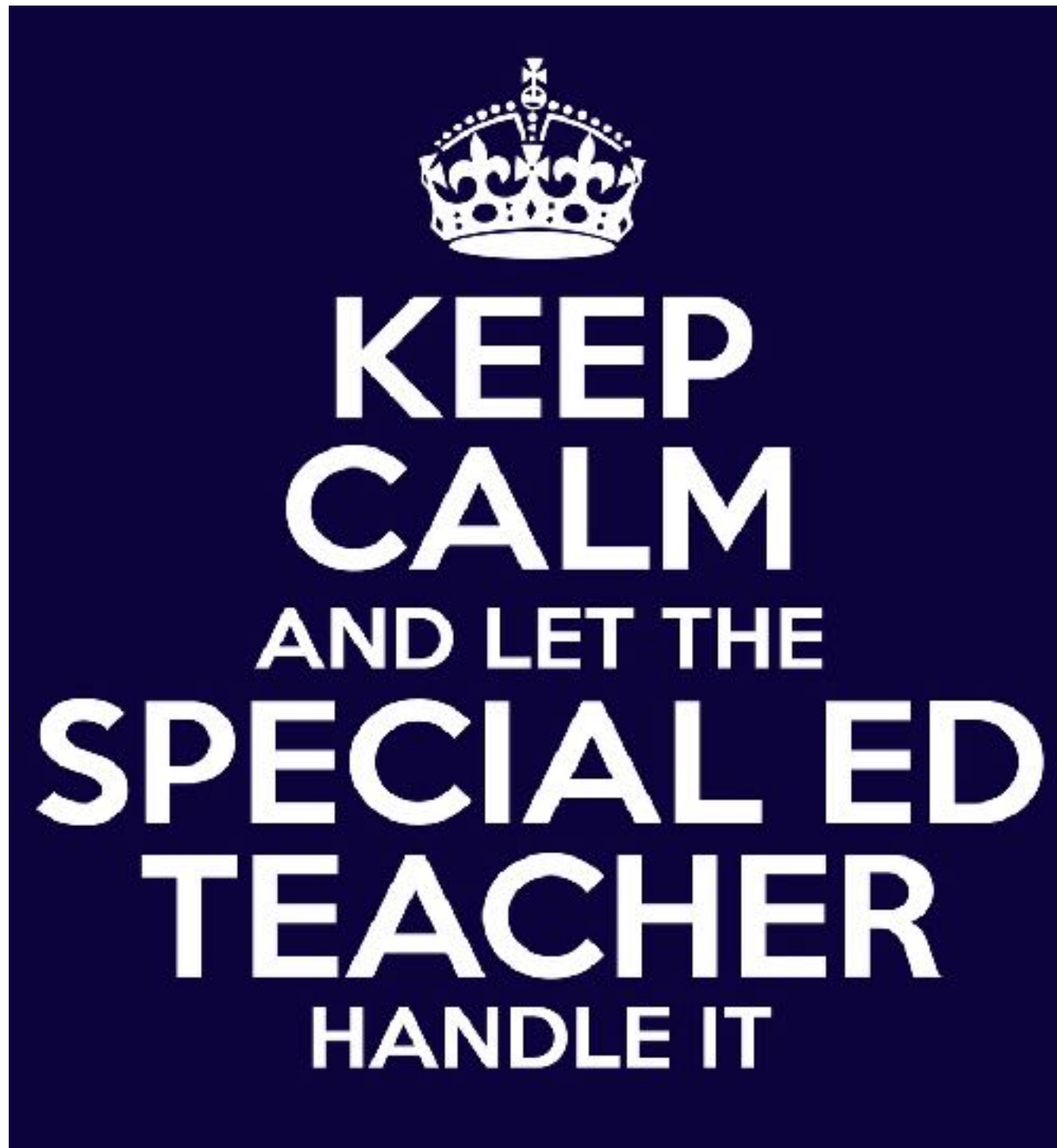
As used in paragraphs (a)(3)(i) through (iii) of this section, the term *regular high school diploma* means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with state standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

ESSA: DEFINITIONS THAT WERE REMOVED

- Core academic subjects
 - NC 1500-2.6
 - Old Book: page 5
- Highly qualified special education teacher
 - NC 1500-2.14
 - Old Book: page 10-12
- Scientifically based research
 - NC 1500-2.31
 - Old Book: page 19

ESSA: **HIGHLY QUALIFIED SPECIAL EDUCATION TEACHER**

- (a) Requirements for special education teachers teaching core academic subjects
- (b) Requirements for special education teachers
- (c) Requirements for teachers teaching alternate achievement standards
- (d) Requirements for special education teachers teaching multiple subjects
- (e) Separate HOUSE for special education teachers
- (f) Rule of construction
- (g) Applicability of ESSA to ESEA and recruitment of new special education teachers
- (h) Private school teachers not covered



WHAT DOES THIS MEAN?

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Best Practice Expectation

- Special Education: Adapted Curriculum (K-12)
- Special Education: General Curriculum (K-12)
- Licensure Guidance Tool - MEMO August 2015

More Work to Come

- Recommend policy language to define the State's expectation for general and adapted curriculum

ESSA: SPED TEACHER MOVED TO PERSONNEL QUALIFICATIONS

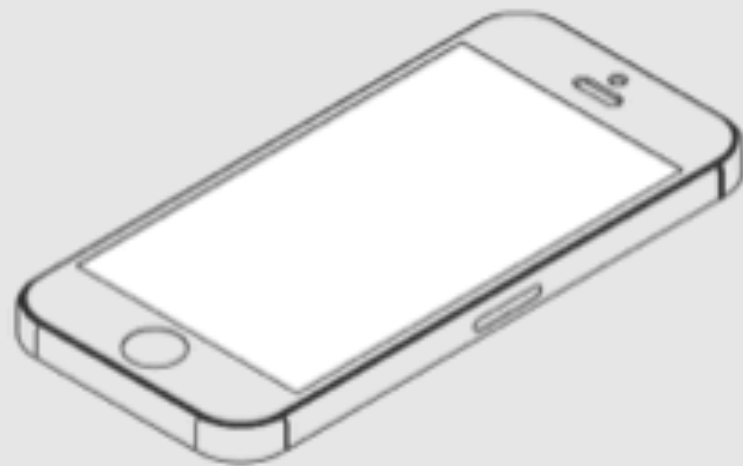
- NC 1501-12.2
- Old Book: page 43-44
- New Book: page 41-42 [NC 1501-12.2(c)(1)(2)]

(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher who teaches in an elementary school, middle school, or secondary school -



What questions do you have?

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OVERVIEW OF HB 149: DYSLEXIA

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

**HOUSE BILL 149
RATIFIED BILL**

**AN ACT TO REQUIRE THE STATE BOARD OF EDUCATION AND LOCAL BOARDS
OF EDUCATION TO DEVELOP TOOLS TO ENSURE IDENTIFICATION OF
STUDENTS WITH DYSLEXIA AND DYSCALCULIA.**

HB 149: HIGHLIGHTS

- Four main parts
 - Part 1: Definition of Dyslexia in *Policies*
 - Part 2: Ongoing PD for identification of and interventions for dyslexia, discalculia and other specific learning disabilities
 - Part 3: SBE should make available resources to parents, educators and other concerned groups
 - Part 4: Local Boards of Education must review diagnostic tools and screening instruments to ensure they are age-appropriate and effective and to determine if additional tools are needed

NC 1500-2.7

Dyslexia

Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

(Authority: HB 149)

PUBLIC SCHOOLS OF NORTH CAROLINA

Educating the Whole Child

SESSION LAW 2017-127 HOUSE BILL 149

AN ACT TO REQUIRE THE STATE BOARD OF EDUCATION AND LOCAL BOARDS OF EDUCATION TO DEVELOP TOOLS TO ENSURE IDENTIFICATION OF STUDENTS WITH DYSLEXIA AND DYSCALCULIA has been posted on the NC DPI Exceptional Children Division website (<https://ec.ncpublicschools.gov/disability-resources/specific-learning-disabilities/dyslexia-and-dyscalculia>).

Materials include:

- Recorded webinar
- Facilitator notes for LEA use
- Power Point slides
- Legislation

If you have any questions, please contact Lynne Loeser at lynne.loeser@dpi.nc.gov or 919-807-3980.

CHANGES INITIATED BY THE EC DIVISION



LEA SELF-ASSESSMENT

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NC 1505-1.2 LEA continuous improvement performance plans and data collection [Self-Assessment](#)

(a) General. Each LEA must have in place ~~a continuous improvement performance plan~~ [an LEA Self-Assessment](#) that evaluates the LEA's efforts to implement the requirements and purposes of Part B of the IDEA, and describes how the LEA will improve such implementation.

(1) Each LEA must submit their ~~continuous improvement performance plan~~ [LEA Self-Assessment](#) on a three-year cycle with updates to the Action Plan submitted annually to the SEA for approval.

(2) As part of the ~~continuous improvement performance plan~~ [LEA Self-Assessment](#), each LEA must establish measurable and rigorous targets for the ~~indicators~~ [core elements](#) established by the SEA under the priority areas described in NC 1505-1.1.

(b) Data collection. Each LEA must collect valid and reliable information as needed to report updates to the Action Plan annually to the SEA on the ~~indicators~~ [core elements](#) established by the SEA for the LEA ~~continuous improvement performance plans~~ [Self-Assessment](#).

(c) Required components.

(1) Analysis of current status of the six Core Elements (through Policy and Compliance Core Element Responses and Practice Profile)

(2) Analysis of LEA implementation and outcome data, including Indicator data

(3) Development, implementation, and reporting on the LEA's improvement plan

LEA SELF-ASSESSMENT

NC 1508 CLASS SIZE: SCHOOL AGE AND PRESCHOOL

NC 1508-1 Class Size: School Age and Preschool

(c) Compliance with this policy shall be monitored through the continuous improvement focused monitoring system, the LEA's ~~continuous improvement performance plan~~ Self-Assessment, and the dispute resolution process.

VISUAL IMPAIRMENT

- Why?
 - OSERS Memo - May 22, 2017
- Key Ideas
 - State-established standards for eligibility must not narrow the definitions in the IDEA.
 - “Visual Impairment including blindness”
 - Any impairment in vision, regardless of severity, must be included in State’s definition, provided that such impairment, even with correction, adversely affects a child’s performance, and requires special education and related services.

VISUAL IMPAIRMENT

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➤ NC 1500-2.4(14) Child with a Disability

➤ New Book: page 7

(14) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. ~~A visual impairment is the result of a diagnosed ocular or cortical pathology.~~

➤ NC 1503-2.5(14) Evaluation Procedures

➤ New Book: page 71

- ~~(ii) To be determined eligible in the disability category of visual impairment, including blindness, a child must have:~~
- ~~(A) A visual acuity between 20/70 and 20/200 in the better eye after correction to be considered visually impaired.~~
 - ~~(B) A visual acuity of 20/200 or less in the better eye after correction or a peripheral field so contracted that the widest diameter subtends an arc no greater than 20 degrees to be considered legally blind.~~

VISUAL IMPAIRMENT: RESOURCES

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EXCEPTIONAL CHILDREN

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Training Materials

These training materials are provided for EC Directors to use within the LEA. Administrators and teachers may access the materials for independent study or use within their schools.

Visual Impairment Policy Spotlight (January 24, 2018)

-  [VI Policy Spotlight](#)
-  [VI Policy Spotlight Q&A](#)
-  [VI Policy Spotlight Webinar](#)

CHECK FOR UNDERSTANDING

Kahoot!



LEGAL TRENDS

Endrew



ENDREW: BACKGROUND

- *Endrew F. v. Douglas County School District*
 - FAPE requirements
 - Student with Autism
 - Dispute: Proposed IEP was basically the same as the previous IEPs. Parents were seeking reimbursement for private school placement.
 - Parents withdrew student and placed in a private school for children with Autism.
 - Behavior improved significantly.
 - Academic goals were strengthened.
 - Student thrived.

ENDREW: BACKGROUND

- *Endrew F. v. Douglas County School District*
 - Important Events
 - 10th Circuit ruled student was only entitled to “de minimus” educational benefit
 - any progress is OK
 - Appealed to Supreme Court
 - March 2017 - Supreme Court overturned 10th Circuit decision
 - Court determined that “to meet its substantive obligation under the IDEA, a school must offer an IEP that is reasonably calculated to enable a child to make progress in light of the child’s circumstances”

ENDREW: BACKGROUND

- *Endrew F. v. Douglas County School District*
 - Important Events
 - Went back to District Court
 - February 12, 2018: Judge ordered reimbursement for cost of private school and associated transportation costs
 - This dispute started in April 2010.
 - District is now vulnerable for damages, costs, attorney's fees.
 - Total bill for the LEA - upwards of seven figures - (millions)

ENDREW: WHAT DOES THIS ALL MEAN?

Although the Court did not determine any one test for determining what appropriate progress would look like for every child, IEP Teams must implement policies, procedures, and practices relating to

- (1) identifying **present levels of academic achievement** and functional performance;
- (2) the **setting of measurable annual goals**, including academic and functional goals; and
- (3) how a child's **progress toward meeting annual goals will be measured and reported**, so that the *Endrew F.* standard is met for each individual child with a disability.

ENDREW: TRENDS

- Nationally
 - 501 cases have applied the *Endrew* standard
- North Carolina
 - 3 cases have applied the *Endrew* standard

ENDREW: NC CASE #1

- IEP Appropriateness
 - Behavior
- Professional Judgement and Deference to Educators
 - “Educational decisions were sound and offered a cogent and responsive explanation for decisions.”
- FINAL DECISION
 - Parents failed to prove that LEA failed to provide FAPE.
 - LEA did NOT have to pay private school reimbursement, associated transportation costs or provide compensatory education.

ENDREW: NC CASE #2

- Crisis Plan as Behavior Support/BIP
 - No requirement for behavioral response or strategy to be reduced to a written plan. *(but you do have to address it)*
- Parent Missing Evidence Claims
 - LEA provided “constant communication”
 - Any gaps in progress monitoring did not inhibit meaningful parent participation
- Appropriate staff training, strategies, interventions to address behavior/social emotional needs were in place
- FINAL DECISION
 - Parents failed to prove that LEA failed to provide FAPE.
 - LEA developed appropriate IEPs/BIPs.
 - Procedural violation regarding the sharing of an evaluation report - but did not constitute a denial of FAPE.

ENDREW: NC CASE #3

- Interactions with non-disabled peers
- Appropriate rate of progress
 - Parent's ABA expert couldn't estimate rate of progress based on 8 years of ABA data.
- Professional Judgement
 - Reinforced deference to educators
- Crisis Plan as Behavior Support/BIP
 - No requirement for behavioral response or strategy to be reduced to a written plan. *(but you do have to address it)*

ENDREW: NC CASE #3

➤ FINAL DECISION

➤ LEA failed to:

- implement IEP for speech services
- provide an appropriate Prior Written Notice
- appropriate access to peers

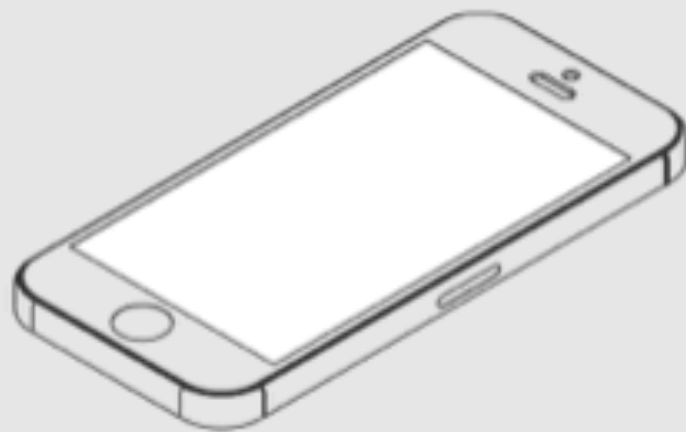
➤ LEA ordered to:

- provide speedy compensatory education
- social skills training to compensate for the time that the student did not have access to peers

ENDREW QUESTIONS

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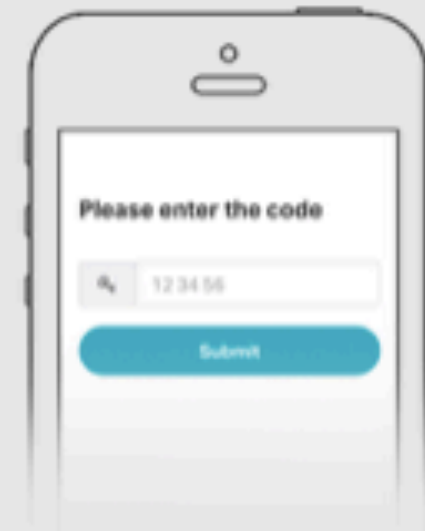
Endrew Questions



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